

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

PAN AMERICAN AIRWAYS CORP.,)
)
 Plaintiff/Counter-Defendant,)
)
 v.) **C.A. No. 04-CV-10515-JLT**
)
 ROBERT E. BARNES,)
)
 Defendant/Counter-Plaintiff.)
)
)

**PLAINTIFF'S STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS
A GENUINE ISSUE OF MATERIAL FACT TO BE TRIED**

Pursuant to Rule 56.1 of the Rules of this Court, the plaintiff, Pan American Airways Corp. ("Pan Am") hereby submits this statement of material facts as to which there exists a genuine issue to be tried in respect of the motion of defendant, Robert E. Barnes ("Barnes") for partial summary judgment on Counts I and IV of the amended complaint.

1. In February of 2002, Barnes participated in the process of accepting delivery of certain Boeing 727 aircraft (the “Aircraft”) and their engines (the “Engines”) installed thereon. Complaint, ¶¶ 5-6.

2. The Federal Aviation Administration (“FAA”) has advised Pan Am that, subsequent to their acquisition by Pan Am, the Aircraft and Engines were not preserved in accordance with practices required under the applicable manuals. Complaint, ¶ 7.

3. At all relevant times, Barnes was responsible for the oversight and management of Pan Am's Maintenance Department, including but not limited to the task of inspecting the Aircraft and Engines upon arrival at Pan Am and ensuring the proper preservation of the Aircraft and Engines. Complaint, ¶ 9.

4. At all relevant times, Barnes had a duty to Pan Am to properly inspect, maintain and/or preserve the Aircraft and Engines. Complaint, ¶ 11.

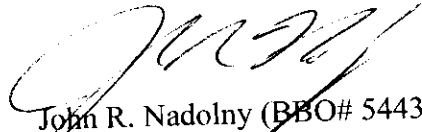
5. Barnes did intentionally fail to perform his duties to properly inspect, maintain, and/or preserve the value of Pan Am's property. Complaint, ¶ 12.

6. The applicable manuals governing inspection, maintenance and preservation of the Aircraft and Engines are specific and require that certain, specific steps be taken to properly inspect, maintain and preserve the Aircraft and Engines. Legere Declaration, ¶ 4.

7. A person with similar experience as Barnes would know that the steps required by the applicable manuals to properly inspect, maintain and preserve the Aircraft and Engines were not being performed. Legere Declaration, ¶ 6.

8. Pan Am's possessory right to the Aircraft and Engines has been seriously impaired by the wrongful damage to the Aircraft and Engines due to Barnes' negligent failure to perform his duties to properly inspect, maintain and/or preserve the Aircraft and Engines, and to properly supervise the employees under his supervision and control. Complaint, ¶ 25.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Nadolny', is written over the printed name.

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